IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1347 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RANCHHOD RAMANAND GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1347 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), the Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated January 15, 2001, Annexure A to the petition,

detained the petitioner - detenu. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of section 2 (b) of the Act and as one case under the Prohibition Act is registered against the petitioner is pending in which statements of two witnesses were recorded and, therefore, according to the detaining authority, his activities are detrimental to the public order and, therefore, powers under Section 9 (2) of the Act were exercised by the detaining authority. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the order of detention dated 15.1.2001 and prayed to set him at liberty forthwith.

2. The petitioner has challenged the order of detention on various grounds. However, Ms. Mishra, learned advocate for the petitioner, has restricted her arguments to the fact that the subjective satisfaction recorded by the detaining authority for exercise of powers under section 9 (2) of the Act cannot be considered as genuine. In order to substantiate her submissions, reliance is placed on the statements of the two witnesses which were recorded on 12.1.2001 and 13.1.2001 and verified by the detaining authority on the next date i.e., 14.1.2001 and, therefore, it can be said that the detaining authority has not exercised the powers under section 9 (2) of the Act properly as the detaining authority had no sufficient time to examine the statements of the witnesses.

3. Mr. K.T. Dave. learned AGP has opposed this petition. He, however, does not dispute the factual aspect of verification of the statements which were recorded on 12.1.2001 and 13.1.2001 and verified on 14.1.2001 and immediately on the next day the order of detention was passed. There is no manner of doubt that the detaining authority has taken into consideration the statements of two witnesses. The detaining authority came to the conclusion that the fear expressed by the witnesses is correct and genuine and the detaining authority exercised the powers under Section 9 (2) of the Act.

4. Similar question arose before Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat 1993 (2) GLR 1659 where the statements of the witnesses were recorded on 16.2.1092 and order of

detention was passed on 17.2.1992 and the Division Bench of this Court has observed that the powers under section 9 (2) of the Act was improperly exercised and was held to be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and, therefore, the detention order was quashed. Applying the principles laid down by the Division Bench of this Court in the case of Kalidas (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also, at the cost of repetition, be it stated that statements of two witnesses were recorded on 12.1.2001 and 13.1.2001 and they were verified immediately on the next day i.e., 14.1.2001. Therefore, the order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

5. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated 15.1.2001 passed against the petitioner - detenu is hereby quashed and set aside. The detinue is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to sots. Direct service is permitted.

23.8.2001. (A.M. Kapadia, J.)

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